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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926—No. 711.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants,*

vs.

RAINEY-WOOD COKE COMPANY, SEABOARD BY-PRODUCT COKE COMPANY, CHICAGO BY-PRODUCT COKE COMPANY, and DONNER-HANNA COKE CORPORATION, *Appellees.*

SUPPLEMENTAL BRIEF ON FACTS FOR THE APPELLEES.

IN No. 711.

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SUPPLEMENTAL BRIEF ON FACTS FOR APPELLEES.

Statement.

This case is one of a group of five, including Nos. 606, 709, 710, 711 and 712 at the present Term, known as the *Assigned Car Cases*, heard together in the Court below.

Appellees herein are participants in a joint brief filed on behalf of all the private car owners in cases Nos. 709, 710, 711 and 712, in which the facts and the law are comprehensively discussed, with application to the Appellees

in all the cases. The argument for the carriers in No. 606 is separately presented in a brief filed in that case, covering both general aspects of all of the cases and the particular situation with respect to the carriers in so far as it differs from that of the private car owners.

The By-product Coke Companies, Appellees in this case, No. 711, are independent industries not operated as parts of the general works of steel companies, and in this respect they differ from the by-product plants of Bethlehem Steel Company and of the interveners in that case at No. 710, such as Youngstown Sheet & Tube Company, Illinois Steel Company and others of the United States Steel Corporation group. Their situation likewise differs from that of the coal mining companies in the case at No. 709. For these reasons it is desired to present for the consideration of the Court the special facts and circumstances relating to the use of private cars by the By-product Coke Companies.

The arguments, both upon the law and upon the facts, presented in the briefs and in behalf of the carriers and of the private car owners generally, are adopted and concurred in by the Coke Companies, and repetition of the facts and the arguments thus presented will be avoided in this brief.

The order of the Commission now before this Court, as demonstrated by the analyses presented in the various briefs, is based chiefly, if not wholly, upon economic grounds and considerations. The order in effect, if the reasons assigned by the Commission for the making of it are to be considered (as they must be), is designed to regulate, as to the public, the price of coal; as to the mine-owner,

the amount of business which he can do and the cost of his production; as to the miner, wages; as to the carrier, the use of carrier-owned facilities other than coal cars; as to the private car owner, the use of his own private property in such a manner as practically to deprive him of such use. These results from the application of the order would be accompanied by no increase in the available number of system cars for use of the non-car-owning mine operator but, on the contrary, a curtailment of the present available car supply; by no increase in the output of coal mined, but by an actual decrease thereof; and by the enforced idleness of privately owned coal cars in times of car shortage when they are of most use.

In contrast, the evidence shows without contradiction the necessity for the employment of the private car in the by-product coke industry, and that the consequences of depriving the industry of the use of private cars are certain to be disastrous.

The plants of the Coke Companies provide gas and coke for public utility service, coke for sale on the open market to public gas companies and blast furnaces and the metallurgical industry generally, and tar, oils, benzol and sulphate of ammonia for a wide variety of important uses. In particular, tar is a basic need for the chemical and dye industries of the country.

In connection with the supply of gas and coke for public utility service, it is essential, not only that supplies of coal be steady and continuous day by day the year round so that the supply of gas upon which the public is dependent will be constant and continuous under the requirements of franchises and the regulations of state utility commissions, but also that the coal be uniform and of se-

lected high grade, adapted because of its chemical content and physical properties to the coking process, as distinguished from the general run of bituminous coal, which cannot be used in the industry. Moreover, the physical characteristics of the plants operated by complainants are such that they are peculiarly dependent upon this uninterrupted daily supply of uniform and specially selected high quality coal.

Actual and extended experience in attempting to conduct by-product coke plants of Appellees without private cars and in reliance upon railroad owned cars, has demonstrated that it cannot be done. The plants were properly placed and constructed; skilled forces selected and trained to operate them; proper and adequate coal supplies contracted for over long terms. But the whole fabric of the service rendered broke down through interrupted transportation of the coal supplies due to recurring railroad car shortages. The private cars were then reluctantly purchased at an aggregate investment in excess of $6,300,000, *useful only in times of such car shortages.* They have solved the transportation problem and provided the only form of insurance which can be had against breakdown of coal supply.

The necessity having been demonstrated by experience, these Coke Companies have merely undertaken to protect themselves against the situation in which the non-car owner finds himself in times of car shortage. Prior to their acquiring the cars they suffered the same inconveniences, interruptions and disadvantages common to all from the shortage of cars, except that in their case the consequences of the interruptions in coal supply were of so serious a nature as to threaten the destruction of the industry.

In order to relieve themselves from this situation they have employed means appropriate and hitherto recognized as both lawful and desirable, in a manner which not only does not increase the disadvantage of the non-car owners from car shortages, but actually ameliorates the general situation by releasing more system cars for common distribution. No undue preference, discrimination or prejudice is believed to be created by this course.

So long as these coke companies relieve themselves from the disasters of car shortages by the long-sanctioned method of providing their own vehicles for transporting their own goods, without thereby decreasing the number of carrier-owned cars available for general distribution to others and without obtaining in the movement of their cars any use of railroad facilities which interferes with the transportation of the coal of others or in any way or degree prefers the movement of their coal cars by the carriers, the use of these private cars is not shown to be unlawful, unduly prejudicial or unduly preferential.

These Appellees, in common with all, disclaim any right to, or desire for, the use of railroad facilities in the movement of their cars which prejudices or trenches upon the rights of any other shipper. If such preferential use of facilities has on any occasion accompanied the use of private cars or is likely to do so in the future, it is conceded that the Commission has the power to, and ought to, promulgate rules which will effectually prevent that result. So that with reference to the entire argument it is respectfully requested that that premise be constantly considered.

The record shows, and the Commission found, that the mining industry is over-developed; that there are too many mines and too many miners to operate all mines and em-

ploy all miners full time in supplying the country's requirements of coal. It is also shown that in times of peak demand for coal, usually accompanied by car shortage, the uneconomical mines are opened, and increase the demand for cars because each is entitled to be rated to its capacity for the allotment of cars under the rules. Labor conditions, working time, tonnage of output and production cost's are internal questions in the mining industry, arising very largely from this over-development.

As a matter of sound public policy and economics, or of law, can the Commission's order to correct and equalize this situation by depriving these Appellees of the beneficial use of their private property and disrupting not one industry but several, be considered reasonable, non-confiscatory or within the jurisdiction of the Commission?

It is to this question that these Appellees direct this brief on the facts, which as now presented are not contradicted.

SUMMARY OF RECORD CONCERNING BY-PRODUCT COKE COMPANIES.

A. Statistical Facts relating to the several Coke Plants.

1. GENERAL:

Company	Legal Domicile	Office	Plant
Rainey-Wood	Pennsylvania	New York	Swedeland (Phila. District)
Seaboard	New Jersey	Newark, N. J.	Kearney (J'y City)
Chicago	Delaware	Wilmington, Del.	Chicago
Donner-Hanna	New York	Buffalo	Buffalo

2. Plant and Cars:

Company	Ovens	Private Coal Cars	Investment
Rainey-Wood	165 Koppers	350	$1,050,000
Seaboard	105 Koppers	650	1,950,000
Chicago	110 Koppers	400	1,500,000
Donner-Hanna	150 Koppers	500	1,800,000

Each plant has complete by-product recovery apparatus and in addition Seaboard and Chicago have modern water-gas plants to make additional gas from the coke produced.

3. Coal Carbonized and Production: Annual.

The plants of all the Coke Companies are of similar character and their business and operations are substantially alike. Each carbonizes bituminous coal, producing therefrom coke, gas, tar and sulphate of ammonia. Rainey-Wood Coke Company and Donner-Hanna Coke Corporation also produce light oils; Seaboard By-Product Coke Company and Chicago By-Product Coke Company do not recover the light oils, but in their operations these remain in the gas produced.

The quantities of coal annually carbonized in the plant of each company and the annual production therefrom is shown by the following table:

Company	Coal Carbonized	Coke Net tons	Gas Billion cu. ft	Tar Million gals.	Sulphate of Ammonia Million lbs.
Rainey-Wood	800,000	550,000	8	8	20
Seaboard	1,000,000	750,000	9	9	25
Chicago	750,000	550,000	12¾	8	20
Donner-Hanna	1,000,000	750,000	6	9	25

Rainey-Wood Coke Company refines, from the light oils produced, approximately two (2) million gallons of benzol annually, used for motor fuel.

4. Public Use of Gas Produced.

Portions of the gas produced are used to operate their plants in heating the ovens, and the balance is sold for industrial purposes and to public service corporations which distribute the same to the public under public obligations. The gas is so distributed by companies serving the territories shown in the following table, and the Coke Companies are obligated by contract to supply to the distributing companies the quantity thereof stated for each;

Company.	Distributor and Quantity.	Territory Served.
Rainey-Wood	Counties Gas & Electric Company. Entire requirements	Boroughs of Norristown Conshohocken, Bridgeport, Narberth, Ardmore and substantially all of Main Line and Schuylkill Valley sections of Philadelphia District, Penna.
Seaboard	Public Service Gas & Electric Co. 25 million cu. feet per day	Northern and Central New Jersey
Chicago	Peoples Gas Light & Coke Company 50 million cu. ft. per day	Chicago and adjacent district, Illinois
Donner-Hanna	Iroquois Gas Corp., to supplement requirements not met by natural gas supply; 9 million cu. ft. per day	Buffalo and adjacent district, New York

All of these public gas companies are dependent at all times upon the gas received from the Coke Companies to enable them to meet and perform their public obligations and to maintain adequate and sufficient public service.

The gas so supplied must be uniformly of the quality and heat value prescribed by franchise and statutory obligations of the gas companies; these requirements can be met by the Coke Companies only if the coal supplies are uniform and standard, and regularly received at their plants.

5. Public Use of Coke Produced.

Coke supplied by the Coke Companies for making water-gas for public distribution is furnished, *inter alia*, to public service gas companies named in and serving the territories described in the following table:

Company.	Gas Companies	Territory Served.
Rainey-Wood	United Gas Improvement Company	City of Philadelphia
	Allentown-Bethlehem Gas Company	Cities of Allentown, Bethlehem and nearby territory, Penna.
	Consumers' Gas Company	City of Reading and nearby territory, Penna.
	Philadelphia Suburban Gas & Electric Company	Phoenixville, Pottstown and nearby territory, Penna.
	Easton Gas Company	City of Easton and nearby territory, Penna.
Seaboard	Operation of own water gas plant; gas furnished to company named below.	
	Public Service Gas & Electric Company	Northern & Central New Jersey, including Newark, Jersey City, Passaic, Patterson and Hoboken.
	Brooklyn Union Gas Company	City of Brooklyn and nearby territory.
	Consolidated Gas Co. of New York	City of New York and nearby territory.
Chicago	Operation of own water gas plant; gas furnished to company named below.	
	Peoples' Gas Light & Coke Company	City of Chicago and nearby territory.
Donner-Hanna	Companies serving in	Western and Central New York.

Coke so used must make gas in sufficient quantity and of proper quality and heat value (B. T. U.) and freedom from sulphur and other injurious properties to meet obligations imposed by franchises and statutory regulation. Only coke made from uniform mixtures of properly selected grades of coal will meet these requirements.

6. Other Uses of Products.

Coke produced by the Coke Companies is also used as follows:

(a) For metallurgical uses in blast furnaces or foundries in competition with beehive coke chiefly made (1) in the so-called Connellsville Region in the western part of Pennsylvania, in Westmoreland, Fayette and Washington Counties, (2) in the Fairmont Region in the northern part of West Virginia, and (3) in the Birmingham District in Alabama.

The Rainey-Wood Company supplies coke to important independent blast furnace operators at Swedeland, Pottstown, Birdsboro, Reading, Temple, Emaus, Catasauqua and Hokendauqua, and for other metallurgical industries at Phoenixville, Parkesburg and other eastern Pennsylvania points.

The Seaboard Company furnishes coke to blast furnaces at Wharton and Netcong, N. J., and to numerous foundries throughout northern New Jersey and the New York district.

Chicago By-Product Coke Company supplies metallurgical coke to independent blast furnaces and foundries in the Chicago District and at other points in Illinois, in Wisconsin and Indiana.

Donner-Hanna Coke Corporation coke for metallurgical uses is distributed to independent blast furnaces in the Buffalo-Niagara Falls District, which district and that of Eastern Pennsylvania supplied by Rainey-Wood Company constitute two of the most important blast furnace regions of the eastern part of the United States, other than Pittsburgh and Youngstown.

(b) For industrial purposes in making steam, the coke so used being of smaller sizes, and in competition with anthracite and bituminous coals and fuel oil.

(c) For domestic purposes in the heating of houses, apartment and other buildings, in competition with anthracite coal and fuel oil.

Tar produced is sold for use in the chemical, drug, dye, photographic, building and road material and other industries dependent upon coal-tar products and for fuel in metallurgical industries.

Sulphate of ammonia is used as an important raw material in the manufacture of commercial fertilizers for agricultural and similar purposes.

Light oils produced are refined to produce benzol for motor fuel and, in times of war, toluol and other materials from which essential high explosives are made.

7. Sources and Transportation of Coal.

The coal cars owned by the coke companies respectively were acquired by each of them in the year 1920, and are used to transport specially selected bituminous coking coal to their respective plants, located on lines of railroads shown in the following table, from coal mines located on the lines of railroad set out therein, said coal being transported over the lines of said railroads and others connecting therewith:

Complainant	Plant on Lines of	In	Mines On Lines of
Rainey-Wood	Upper Merion & Plymouth R. R.; Pennsylvania R. R. and Reading Co. as trunk line connections.	Westmoreland and Fayette Counties, Pa.	Pennsylvania R. R. Baltimore & Ohio R. R., Pittsburgh & Lake Erie R. R., Monongahela Railway.
Seaboard	Erie R. R., Delaware, Lackawanna and Western R. R.	West Virginia and Virginia.	Chesapeake & Ohio Railway; movement to tidewater and thence by ocean.

Chicago	Ill. Cen. R. R., Chi. & Ill. West R. R. and Belt Line R. R. connecting in Chicago Switching District with each trunk line entering Chicago.	Harlan and Pike Counties, Kentucky.	Louisville & Nashville R. R. and Chesapeake & Ohio Railway.
Donner-Hanna	So. Buffalo Ry., Delaware, Lackawanna & Western R. R.; Buffalo, Rochester & Pittsburgh Ry.	Westmoreland Coal Region and Allegheny and Indiana Counties, Pa.	Pennsylvania R. R., Baltimore & Ohio R. R., Pittsburgh & Lake Erie R. R., Buffalo, Roch. & Pgh. Ry.

8. Distinctive Features of Operations.

The Coke Companies are primarily engaged in the supply of gas for public distribution, in large centers of population, and must furnish the gas at all times in uniform quantities and of required quality and specifications. The prices paid for the gas by ultimate consumers are regulated by law and cannot be increased without sanction of state authorities. The Coke Companies in turn receive for it only such amounts as their direct customers can justifiably pay under their own rates to the public.

These companies can operate under such conditions only if they can develop and maintain a commercial market for their coke and, as a consequence, are known as "commercial coke plants" insofar as their coke production is concerned.

In the development of this market, the principal prospective customers are water-gas plants, blast furnaces, foundries, and the domestic trade, including heating of buildings and institutions.

The principal competition encountered is that of beehive coke in the metallurgical trade; beehive coke and anthracite coal in water-gas operations; and anthracite coal

and fuel oil in the domestic trade. Unless this competition can be successfully met by making and offering coke of proper and uniform grade and quality, these markets cannot be secured and held, and the ability to render public gas service is destroyed.

Production of proper and uniform coke for these sharply competitive markets requires a constant and uniform supply of particular kinds of coal. Long term contracts for the needed coals have been made with responsible operators, or mines producing it have been bought by affiliated companies. Its transportation to the plants has been and is the weakest link in the entire chain of operations, and a disastrous experience has shown that the only means of insurance for this transportation is by the use of privately owned coal cars.

The Coke Companies are therefore peculiarly dependent upon the ability to continue the use of their privately owned coal cars as heretofore, and the uncontradicted testimony is that the order of the Commission will be disastrous to this basic and public industry if it be allowed to stand.

B. Essential Needs in Coke Plant Operations.

This summary is made from testimony of Mr. H. B. Rust, who testified for the group, beginning at page 1203 of the printed record in this Court, to which references are cited.

Mr. Rust is president of Seaboard By-Product Coke Company and Chicago By-Product Coke Company, appellees herein; also of Minnesota By-Product Coke Com-

pany, operating a plant of 65 Koppers ovens at St. Paul, carbonizing 365,000 tons of coal per annum, making 250,000 tons of coke per annum and supplying 90% of the gas distributed to the public in St. Paul; also of Koppers Company, Pittsburgh, engaged in the business of constructing by-product coke plants and associated apparatus. This last company has built about 90% of such plants now in use in America, including the plants of all appellees herein (pp. 1203-1204).

Appellees' Plants must:—

1. Operate continuously.

2. Receive a continuous supply of uniform grade of fresh-mined coals from particular selected mines.

Actual experience has shown that, for these purposes, it is necessary to use private coal cars under the existing *Traer-Hocking Valley* rule.

1. Continuous Operation is Necessary Because:—

(a) Public Gas Supply. Gas cannot be stored but must be made each day to supply specific quantities to distributing gas companies, which are at all times dependent thereon to meet their franchise and statutory obligations; otherwise heavy penalties are incurred by appellees. Coke must also be regularly made to be supplied to these and other gas companies to make water-gas as added sources of public gas supply (pp. 1205-1208, 1211).

(b) Physical effect of interrupted operations on by-product plants. These plants cannot be shut down, upon failure of regular coal supplies, without great physical injury to the ovens and long delay in resuming production.

They are built of special silica brick, operated at very high temperatures. It requires eight weeks to bring the ovens up to temperature before being charged with coal; rapid heating will expand the oven walls, destroy them and require rebuilding substantially at replacement cost and with long delay. Likewise *sudden shut-downs wreck the ovens* with even more serious results. Proper gradual cooling, repairs and resumption of operations require upwards of eight months time and complete suspension of production (pp. 1208-1210).

2. Continuous Supply of Uniform Grades of Fresh-mined Coal from Particular Selected Mines is Necessary Because:—

(a) Required because of public gas service. Coals used must give needed quantity of gas with required B. T. U. content, substantially free from sulphur, napthalene, and other elements dangerous to patrons. Coals vary greatly in these respects, and gas yields may be cut 50% by using wrong coals. High sulphur coals are particularly unsuitable (pp. 1210, 1211-1212).

(b) Required to establish coke market; output must meet most exacting requirements of all customers. Economic operation of by-product plants to supply public gas service is impossible unless coke produced can be sold. Otherwise cost of gas service is prohibitive and public gas service cannot be given or expanded (p. 1213). Coke must be produced for a wide variety of purposes; otherwise the available market is not broad enough to absorb the coke. All coke must therefore meet the most exacting requirements of prospective customers. The back-log of this market must be established through quantity sales to water-

It may also be argued that even though the assurance to the complainant was the assurance of the entire Commission itself, that does not act as estoppel against the future reversal of the Commission's position. But if this be so, it may be pointed out that the facts here present do constitute exceedingly unreasonable and arbitrary regulation by the Interstate Commerce Commission. For the facts with respect to these cars are not different now than they were in 1920. The situation is one in which a somewhat more liberal view should be adopted by the regulatory body and justification therefor may be found in the recent decision of the United States Supreme Court in *United States* v. *United States Steel Corp.*, 251 U. S. 417. There Mr. Justice McKenna, speaking for the majority of the United States Supreme Court said (pp. 452-453):

> "* * * It is certainly a matter for consideration that there was no legal attack on the corporation until 1911, ten years after its formation and the commencement of its career. We do not, however, speak of the delay simply as to its time, or say that there is no estoppel in it because of its time, but on account of what was done during that time—the many millions of dollars spent, the development made, and the enterprises undertaken; the investments by the public that have been invited and are not to be ignored. And what of the foreign trade that has been developed and exists?"

It will be observed that the Supreme Court declares that "it is certainly a matter for consideration" even when the government did not make any express representations upon the faith of which the corporation changed its position and embarked upon extensive operations—when all that the government did was to refrain from prosecution under the act and thereby create the impression that the activities of the company were not unlawful. The situation of the private car owners, with an investment upon express representations by this Commission, is infinitely stronger than that of the defendant in the case cited, and is therefore even more so a matter for consideration.

Without the necessity therefore of contending that a technical estoppel should be applied, we direct the Court's attention to the language of the authorities in similar situations:

> "The State is forever prescribing rules of conduct for its citizens; and it should be particularly careful not to disregard the ethical standards which it has itself set up. The law does not favor one set of morals for the individual and another for officialdom.
>
> *Woodruff* v. *Trapnell*, 10 How. 190;
>
> *State of Indiana* v. *Milk*, 11 Fed. 389;
>
> *United States* v. *Willamette, etc., Co.*, 54 Fed. 807, 811;
>
> *Pearsall* v. *Great Northern Ry.*, 161 U. S. 646, 662-3.
>
> "In *Woodruff* v. *Trapnell* (*supra*), this Court said (p. 207):
>
> > 'We naturally look to the action of the sovereign state to be characterized by a more scrupulous regard to justice and a higher morality than belong to the ordinary transactions of individuals.'
>
> "In *Indiana* v. *Milk* (*supra*), Judge Gresham, afterwards Secretary of State, said (p. 397):
>
> > 'Resolute good faith should characterize the conduct of states in their dealings with individuals; *and there is no reason in morals or law that will exempt them from the doctrine of estoppel.*'
>
> "That the State may be estopped by its authorized agents is now well recognized.
>
> *Whitehall, etc., Co.* v. *Atlantic, etc., Co.*, 160 App. Div. 208, 211;
>
> *United States* v. *Stinson*, 125 Fed. 907, 910; aff'd 197 U. S. 200;
>
> *Iowa* v. *Creighton* (C. C. A.), 191 Fed. 270;
>
> *Bayne* v. *United States* (C. C. A.), 195 Fed. 236."

But the Court will also note that there is explicit statutory provision on this subject now in the twelfth paragraph of Section 1 of the interstate commerce act. That paragraph the Commission itself and the Courts as well, have construed to be a statutory enactment of the assigned car rule. It is difficult to conceive how the regulatory body which finds an administrative rule crystallized into statute can now assume to violate the statutory rule, and set up in lieu thereof another administrative rule. This, as we perceive it, is what the action of the Commission in the order under consideration amounts to. If the Commission be correct in its view and if the Courts be correct in their view that paragraph (12) is a statutory enactment of the assigned car rule, then manifestly the Commission is without authority to disestablish it as it has done in the order under attack.

So far as the Commission's two decisions on this subject give indication of the ground upon which the order is based, it would seem to come to this: That there is inherent in the operation of private coal cars preferential use of other common carrier facilities of the railroad in the operation of such cars. This we deny, and we insist that there is no evidence before the Commission which justifies such a conclusion. Suffice to say that as respects the cars of this complainant there is no evidence whatever on this phase of the subject, and that as respects private cars generally, a thorough review of all the evidence before the Commission shows that what the Commission has found and what it orders for the future, is not only beyond the weight of the evidence but is without any supporting evidence at all. The case comes, therefore, to this: If, in the record before the Commission there be any instance proving as to any particular cars, operated at any particular time, on any particular railroad, an undue preference in violation of the third section of the interstate commerce act, that particular instance of undue preference,

with resulting undue prejudice to others, may be regulated by the Commission. But the mere existence of such individual case or occasional cases of section (3) violation constitutes no ground for a nation-wide order which in substance abolishes all beneficial use of private coal cars by the owners thereof. *The Tap Line Cases, United States* v. *Louisiana & P. R. Co.*, 234 U. S. 1. This last cited decision referred to an order of the Commission abolishing all right of the short line feeder railroads, known as tap lines, to participation in joint through rates with trunk lines and to divisions of such rates. The Commission made its order of abolishment on the theory that such divisions of joint through rates being paid to tap lines which were owned or controlled by the industries furnishing the tonnage for the tap lines, might amount to preferences and rebates. But the view of the Supreme Court was that granting that that be so, the Commission had ample power to correct the unlawful transactions as they might arise, and that the possible presence of discrimination and preference and prejudice in tap line divisions constituted no ground for nation-wide abolishment of the arrangements under investigation. So here it must be found that if preferences and prejudices exist, they should be regulated and cured when and as they exist, and they should not be regulated and cured by the coarse and arbitrary method of outright prohibition. That the Commission has recognized in other investigations of the use of private facilities by common carriers, and the same liberality of conduct which guided it on those occasions should guide it here. *In the Matter of Private Cars*, 50 I. C. C. 652; *Private Wire Contracts*, 50 I. C. C. 731.

It is therefore respectfully submitted that the order of the Commission constitutes a violation of complainant's rights in that they have been denied due process of law, is made without statutory authority, and is unreasonable and arbitrary, and should be enjoined, annulled, and set

aside under the authority of the well established rule of the Supreme Court of the United States. *Interstate Commerce Commission* v. *Union P. R. Co.*, 222 U. S. 541.

Respectfully submitted,

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